

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Commonwealth Broadcasting Group, Inc.	)	
	)	CSR-8203-A
For Modification of the Greenwood/Greenville,	)	
Mississippi DMA	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 12, 2010**

**Released: January 13, 2010**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Commonwealth Broadcasting Group, Inc., licensee of station WABG-TV, (ABC, DT Ch. 32), Greenwood, Mississippi (“WABG-TV”), filed the above-captioned petition for special relief seeking to modify the Greenwood/Greenville, Mississippi designated market area (“DMA”) to include the communities of Batesville, Clarksdale, Courtland, Lambert, Lyon, Marks, Pope, and portions of unincorporated Panola, Quitman and Coahoma Counties, Mississippi, which are served by Cable One and are located in the Memphis, Tennessee DMA.<sup>1</sup> An opposition to this petition has been filed on behalf of WMC License Subsidiary, LLC, licensee of station WMC-TV (NBC, DT Ch. 52), and Newport Television License, LLC, licensee of television broadcast stations WLMT (CW, DT Ch. 31) and WPTY-TV (ABC, DT Ch. 25), all Memphis, Tennessee (collectively, the “Local Broadcasters”) to which WABG-TV has replied.<sup>2</sup> In addition, Cable One, operator of the cable system serving the communities, has filed comments in support of WABG-TV’s petition. For the reasons stated below, we grant WABG-TV’s request.

**II. BACKGROUND**

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights

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<sup>1</sup>Modification at 1. WABG-TV originally filed a market modification petition on July 21, 2009 (CSR-8193-A) which was withdrawn by the petitioner. The instant petition was re-filed by WABG-TV on September 2, 2009.

<sup>2</sup>We note that the Local Broadcasters in their opposition and WABG-TV in its reply point to procedural deficiencies. However, upon review we find that the procedural issues raised have been resolved to our satisfaction and need not be discussed herein.

on cable systems located within the station's market.<sup>3</sup> A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>4</sup> A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>5</sup>

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's market to better effectuate the purposes of this section.<sup>6</sup>

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as in -

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>7</sup>

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<sup>3</sup>*Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-2977 (1993) ("Must Carry Order").

<sup>4</sup>Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

<sup>5</sup>For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>6</sup>47 U.S.C. § 534(h)(1)(C).

<sup>7</sup>*Id.*

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

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[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.<sup>8</sup>

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.<sup>9</sup>

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modifications that requires the following evidence be submitted:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.<sup>10</sup>

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<sup>8</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<sup>9</sup>*Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

<sup>10</sup>Note to Paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographic features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

- (3) Available data on shopping and labor patterns in the local market.
- (4) Television station programming information derived from station logs or the local edition of the television guide.
- (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
- (6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>11</sup>

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

### III. DISCUSSION

5. The issue before us is whether to grant WABG-TV's request to include the subject communities as part of its television market for mandatory carriage purposes. WABG-TV, which is licensed to Greenwood, Mississippi, is part of the Greenwood/Greenville, Mississippi DMA. Panola, Quitman and Coahoma Counties, Mississippi, where all of the communities requested for inclusion are located, are part of the Memphis, Tennessee DMA.

6. The first statutory factor is "whether the station, or other stations located in the same area have been historically carried on the cable system or systems within such community."<sup>12</sup> WABG-TV argues that it has a long history of carriage in the subject communities and that such carriage demonstrates that WABG-TV's television market extends well beyond Nielsen's artificial county-line boundaries.<sup>13</sup> WABG-TV states that it has been continuously carried on the cable system serving the communities since 1978 and that, currently, Cable One delivers its signal in both analog and HD format pursuant to a voluntary retransmission consent agreement between the parties.<sup>14</sup> Moreover, WABG-TV points out that the only other full power television station assigned to the Greenwood/Greenville DMA -- CBS affiliate WXVT-TV, Greenville, Mississippi -- is also carried by Cable One.<sup>15</sup> WABG-TV argues that a grant of its petition will confirm that it should be considered local to the communities at issue and will establish its right to elect mandatory carriage.<sup>16</sup>

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<sup>11</sup>47 C.F. R. § 76.59(b).

<sup>12</sup>47 U.S.C. § 534(h)(1)(C).

<sup>13</sup>Modification at 4.

<sup>14</sup>*Id.* at 5 and Exhibit 1.

<sup>15</sup>*Id.* at 5-6.

<sup>16</sup>*Id.* at 5.

7. The second statutory factor is “whether the television station provides coverage or other local service to such community.”<sup>17</sup> WABG-TV argues that all of the cable communities are located within its digital 41 dBu signal coverage contour (the digital equivalent of an analog predicted Grade B contour), as is Cable One’s headend facility.<sup>18</sup> WABG-TV maintains that Longley-Rice analyses of its digital coverage demonstrates that WABG-TV actually provides 41 dBu or greater coverage to all of Coahoma and Quitman Counties and approximately two-thirds of Panola County; an indication that the majority of residents are likely to be able to receive WABG-TV’s signal over-the-air.<sup>19</sup> WABG-TV asserts, therefore, that there can be no dispute that the communities fall within the station’s natural service area and that its signal is viewable, not only in the communities at issue, but well beyond.<sup>20</sup> WABG-TV argues further that Greenwood, its city of license, is geographically proximate to each of the communities at issue with an average distance of 52 miles.<sup>21</sup> In addition, WABG-TV states that a topographic map demonstrates that there are no restrictive geographic or terrain features such as mountain ranges or large bodies of water between WABG-TV and the communities and that there is a significant network of roadways connecting Greenwood and the communities.<sup>22</sup> WABG-TV maintains that the Commission has previously granted requests for inclusion with similar or greater distances than those listed herein.<sup>23</sup>

8. WABG-TV argues that it also offers a wide variety of programming specifically targeted to the communities such as locally produced news, weather and sports programming.<sup>24</sup> WABG-TV states that it is the number one rated news station in the Mississippi Delta region according to a recent market analysis.<sup>25</sup> On weekdays, WABG-TV states that it airs locally produced news broadcasts from its studio in Greenville, Mississippi at 6-7 a.m., 5-5:30 p.m., and 10-10:35 p.m.<sup>26</sup> In addition, WABG-TV airs a 35-minute local news broadcast at 10 p.m. on Saturdays and Sundays, as well as an hour-long weekday morning news show, “Good Morning Mississippi,” along with local news programming in the afternoon and evening.<sup>27</sup> WABG-TV asserts that it has a fully functioning news department which is ready to cover

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<sup>17</sup>47 U.S.C. § 534(h)(1)(C).

<sup>18</sup>Modification at Exhibit J.

<sup>19</sup>*Id.*

<sup>20</sup>*Id.* at 7.

<sup>21</sup>*Id.* at Exhibit L. WABG-TV states that Greenwood is located 57 miles from Batesville, 51 miles from Clarksdale, 52 miles from Courtland, 48 miles from Lambert, 52 miles from Lyon, 52 miles from Marks, and 50 miles from Pope. The average of these distances is 52 miles. *See id.* at Exhibit M. By contrast, WABG-TV points out that Memphis, Tennessee is located 54 miles from Batesville, 71 miles from Clarksdale, 59 miles from Courtland, 64 miles from Lambert, 69 miles from Marks, and 61 miles from Pope, with an average of 63 miles. *Id.*

<sup>22</sup>*Id.* WABG-TV notes that, unlike the Commission’s decision in *Media One of Los Angeles, Inc. and MediaOne Group, Inc.*, 15 FCC Rcd 19386 (2000), which denied a request for inclusion due to the existence of mountain ranges located between the station and communities, no such barriers exist in this instance.

<sup>23</sup>*Id.* at 8, citing *Pappas Telecasting, Inc.*, 11 FCC Rcd 6102 (1996) (65 miles); *Channel 33, Inc.*, 11 FCC Rcd 3579 (1996) (81 miles).

<sup>24</sup>*Id.* at 8.

<sup>25</sup>*Id.* at Exhibit O.

<sup>26</sup>*Id.* at Exhibit P; *see also* Exhibit N which provides a list of representative news stories aired on WABG-TV concerning issues and events in Coahoma, Quitman and Panola Counties.

<sup>27</sup>*Id.*

any important Mississippi news event at a moment's notice.<sup>28</sup> WABG-TV states that it also broadcasts local sports programming targeted to the communities through locally-produced television programming and presentation of local and national sports reports.<sup>29</sup> WABG-TV notes that it is listed in the major television viewing guides distributed in the communities such as Coahoma County's main newspaper, the *Clarksdale Press Register*, as well as Zap2it.com, a popular Internet site that contains local broadcast listings.<sup>30</sup> WABG-TV points out that the Commission has previously recognized that a station's presence in local television viewing guides provides evidence that it is part of the same economic and geographic market covered by the relevant guide.<sup>31</sup> WABG-TV argues that further evidence that its programming is targeted to the communities lies in the number of local businesses that purchase advertising on the station,<sup>32</sup> as well as letters from local community leaders documenting the strong nexus between the station and the communities.<sup>33</sup> Finally, WABG-TV argues that there are strong economic links between Greenwood and the communities which are supported by commuting patterns and tourism figures.<sup>34</sup>

9. The third statutory factor is "whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community."<sup>35</sup> WABG-TV argues that, while the Memphis DMA commercial stations carried by Cable One provide some Mississippi coverage, their coverage focuses extensively on far northern Mississippi, western Tennessee and eastern Arkansas.<sup>36</sup> WABG-TV states that although it doesn't deny that these stations may provide some coverage of news relevant to the communities at issue, it maintains that it is not at the same level as that provided by WABG-TV.<sup>37</sup>

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<sup>28</sup>*Id.* at 9. WABG-TV states that its weekend anchor/general assignment reporter is specifically assigned to cover the communities at issue as part of her regular beat and has reported on numerous stories important to the communities' residents. *See id.* at Exhibit Q.

<sup>29</sup>*Id.* at 10. WABG-TV states that high schools in Coahoma, Quitman and Panola counties are also regularly covered by its sports department and provides special features, such as "Signing Days," which recognizes high school and community college athletes throughout the communities who sign to play collegiate sports at colleges and universities.

<sup>30</sup>*Id.* at 11 and Exhibit R.

<sup>31</sup>*Id.*, citing *Comcast of Central New Jersey*, 13 FCC Red 1656 (1998) (noting significance of "whether local newspaper or other listings of station programming that have circulation in the cable communities include the programming of the stations in question").

<sup>32</sup>*Id.* at 11-12, citing 47 C.F.R. § 76.59(b)(6) (recognizing that the "viewing pattern" prong of Section 614(h) can be satisfied through "station advertising and sales data.").

<sup>33</sup>*Id.* at Exhibit S.

<sup>34</sup>*Id.* at 13-14 and Exhibits T, U, and V.

<sup>35</sup>47 U.S.C. § 534(h)(1)(C).

<sup>36</sup>Modification at 14-15.

<sup>37</sup>*Id.* at 15. WABG-TV points out Memphis is over 210 miles from Jackson, Mississippi, the state capital, and it is unlikely therefore that Memphis DMA stations will have comprehensive coverage of Mississippi political news.



10. The fourth statutory factor concerns “evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.”<sup>38</sup> WABG-TV argues that Nielsen’s *2008 County Coverage Study* demonstrates that WABG-TV has earned significant off air and total viewing ratings in Coahoma, Panola and Quitman Counties.<sup>39</sup> For instance, WABG-TV notes that its nightly 5:00 p.m. local newscast achieved the following ratings in the three counties: Coahoma – 7 share, 10 cume; Panola – 1 share, 1 cume; and Quitman – 5 share, 13 cume.<sup>40</sup>

11. In their opposition, the Local Broadcasters argue that, according to data obtained from a special report prepared by Nielsen Media Research, WABG-TV receives a zero rating in the communities based on average, all-day viewing.<sup>41</sup> Moreover, over the same period of time, the Local Broadcasters point out that WMC-TV and WPTY-TV received significant viewership in the communities at issue.<sup>42</sup> The Local Broadcasters argue that instead of analyzing the most recent ratings information, WABG-TV relied on year-old ratings data for selected dayparts.<sup>43</sup> While these data demonstrate that some viewers watched some of WABG-TV’s programming, the Local Broadcasters assert that WABG-TV’s showing does not constitute evidence of the substantial viewing required by the Commission.<sup>44</sup> The Local Broadcasters argue that it is not surprising that WABG-TV has so few viewers in the communities given the close economic ties between the communities’ residents and the Memphis market.<sup>45</sup> Despite WABG-TV’s contentions, the Local Broadcasters state that labor statistics indicate that more workers commute from the communities at issue toward Memphis than to Greenwood.<sup>46</sup> Moreover, while WABG-TV claims that it is listed in major television viewing guides that are distributed in the communities, the Local Broadcasters state that they can find only a single example of the station being listed in a television guide from one of the seven communities herein.<sup>47</sup>

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<sup>38</sup>47 U.S.C. § 534(h)(1)(C).

<sup>39</sup>Modification at Exhibit W. WABG-TV states that this report summarizes average ratings information for the sweeps period ratings book from May 2007, July 2007, November 2007, and February 2008. Additionally, WABG-TV points out that Nielsen’s *2008 NSI Diary County Coverage* report, which measures sign-on/sign-off HH weekly cume, indicates that WABG-TV is the top ranked ABC affiliate in Coahoma and Quitman counties with cume scores of 53 percent and 25 percent, respectively. *See id.* at Exhibit O.

<sup>40</sup>*Id.* at 16. WABG-TV states that it achieved similar substantial viewership in other day parts as well. *See id.* at 17.

<sup>41</sup>Original Opposition at Exhibit A. The Local Broadcasters state that the viewership data is based on “Sunday-Saturday, 7a.m. – 1a.m.” ratings that the Commission determined were the most relevant for this purpose. *See* Opposition at 4, citing 47 C.F.R. § 76.59(b)(6).

<sup>42</sup>*Id.* at 13 and Opposition at 3.

<sup>43</sup>Opposition at 4, citing Modification at Exhibit W.

<sup>44</sup>*Id.*

<sup>45</sup>*Id.*

<sup>46</sup>*Id.* at 5. Indeed, the Local Broadcasters point out that more workers commute from Panola County alone to Memphis and its environs than allegedly commute from all of the communities toward Greenwood. *See* Original Opposition at Exhibit C.

<sup>47</sup>*Id.*

12. In addition, the Local Broadcasters argue that they provide substantial local coverage to the communities, despite WABG-TV's unsubstantiated claims.<sup>48</sup> For instance, the Local Broadcasters point out that over a one year period, WPTY-TV broadcast 66 news stories that related to events occurring in one or more of the communities; WMC-TV covered stories occurring in Panola County, Batesville, Quitman County, Marks, Coahoma and Clarksdale; and WMC-TV's weather team helped 150 Batesville residents program their emergency weather radios.<sup>49</sup> The Local Broadcasters argue that WABG-TV has failed to provide sufficient evidence of its claim that it provides substantial coverage of local issues in the communities other than a list of stories, many of which are duplicates or that have no connection to the communities at issue.<sup>50</sup> In any event, the Local Broadcasters state that the statutory standard is not whether the in-market stations provide "less" coverage of local issues than the station seeking market modification, but instead whether any in-market station "provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community."<sup>51</sup>

13. Finally, the Local Broadcasters argue that a grant of WABG-TV's petition would give the station an unfair competitive advantage.<sup>52</sup> WABG-TV is currently carried voluntarily by the cable operator serving the subject communities and nowhere in its petition does WABG-TV contend that its voluntary carriage status would be in jeopardy should its petition be denied.<sup>53</sup> However, the Local Broadcasters argue that because WABG-TV's in-market competitor, WXVT, is also carried on the same system pursuant to a retransmission consent agreement, grant of WABG-TV's request would give WABG-TV an unfair advantage over WXVT in future carriage negotiations.<sup>54</sup> Similarly, a grant of WABG-TV's request would also threaten the Memphis ABC station, WPTY-TV, because should WABG-TV achieve must carry status, WPTY-TV might be required to delete programming which substantially duplicates that carried by WABG-TV.<sup>55</sup> The Local Broadcasters maintain that even rescheduling one daily one-hour show could subject WPTY-TV to being dropped by Cable One or be forced to make programming decisions based on WABG-TV's programming.<sup>56</sup> The Local Broadcasters assert that, in evaluating WABG-TV's market modification, the Commission "must take into account the effect a grant of must carry status to [WABG] will have on" competing stations.<sup>57</sup> The Local Broadcasters conclude that in view of the lack of geographic and market connections between WABG-TV

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<sup>48</sup>*Id.* at 6.

<sup>49</sup>*Id.*

<sup>50</sup>*Id.* at 7.

<sup>51</sup>*Id.*, citing 47 U.S.C. § 534(h)(C)(ii)(III).

<sup>52</sup>*Id.* at 8, citing *Pacific & Southern Co., Inc.*, 14 FCC Rcd 4558, 4566 (1999); *Guy Gannett Communications, Inc.*, 13 FCC Rcd 23470, 23479 (1998).

<sup>53</sup>*Id.*

<sup>54</sup>*Id.*

<sup>55</sup>*Id.*, citing 47 C.F.R. § 76.56(b)(5).

<sup>56</sup>*Id.*, citing *Brenmor Cable Partners L.P.*, 14 FCC Rcd 11742, 11753 (1999) (declining to exclude a station from a modified market because competing stations that "served. . . essentially the same" market were carried on cable systems there.).

<sup>57</sup>*Id.* at 8-9, citing *Free State Communications, LLC*, 24 FCC Rcd 7339, 7348 (2009); *Tennessee Broadcasting Partners*, 23 FCC Rcd 3928, 3952 (2008).



and the communities, it is particularly inappropriate to put WXVT and WPTV-TV at a competitive disadvantage by creating a situation not intended by the Cable Act.

14. In reply, WABG-TV states that, in order to place this proceeding in its proper context, it should be noted that WABG-TV and WPTY-TV, both ABC affiliates, have been engaged in vibrant competition in the subject communities for many years.<sup>58</sup> WABG-TV states that both stations compete for viewers by seeking to cover news, sports and community events of interest to the residents and that this competition ultimately encourages each station to maximize its efforts to fulfill the goals of localism.<sup>59</sup> WABG-TV maintains that WPTY-TV is seeking to thwart this competition by opposing the instant market modification and expand its monopoly over ABC viewership in the communities by denying cable carriage to WABG-TV.<sup>60</sup> WABG-TV asserts that WPTY-TV cannot help but be aware that the ABC network has advised WABG-TV that it can no longer grant retransmission consent for out-of-market carriage of the station, a move which reverses ABC's prior policy allowing the continuation of historical out-of-market carriage.<sup>61</sup> WABG-TV argues that unless it can obtain must carry rights through the market modification process, it will be unable to continue carriage on Cable One's system pursuant to a retransmission consent agreement, thus granting WPTY-TV an undeserved competitive advantage by precluding competition in the communities where viewers have long had the ability to choose between ABC affiliated stations with locally produced programming.<sup>62</sup>

15. WABG-TV points out that WPTY-TV already has a substantial competitive advantage in that it is part of an expansive media conglomerate consisting of 27 full power stations located in DMAs accounting for nearly 10 million TV households,<sup>63</sup> and is located in the Memphis DMA which includes 667,890 households covering 28 counties in 4 different states and ranks in the top 50 DMAs.<sup>64</sup> WABG-TV states that, in contrast, it is a stand-alone station that is in a DMA which consists of only 75,190 television households in 8 counties and its DMA is ranked 184<sup>th</sup> out of 210 television markets.<sup>65</sup> WABG-TV states that the legislative history of Section 614(h) indicates that Congress intended for the Commission to modify a station's market where, as here, it is shown that the original DMA allocation denies cable subscribers access to a station that is truly within its economic market.<sup>66</sup> Moreover, the legislative history also contemplates that at the geographic boundaries of DMAs, communities may

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<sup>58</sup>Reply at 2.

<sup>59</sup>*Id.* WABG-TV states, for instance, that it actively seeks to sell advertising to businesses desiring to reach local viewers in the communities.

<sup>60</sup>*Id.* WABG-TV contends that it is disingenuous for WPTY-TV to argue in opposition that grant of the petition would unjustly favor WABG-TV when an unfair competitive advantage is exactly what WPTY-TV is seeking.

<sup>61</sup>*Id.* at 2-3.

<sup>62</sup>*Id.* at 3.

<sup>63</sup>*Id.* at Exhibits 1 and 2. WABG-TV states that there are also 29 low power/translator stations owned by WPTY-TV's parent company.

<sup>64</sup>*Id.* at 3, citing the *2009 Broadcasting & Cable Yearbook*, B-195 (2009).

<sup>65</sup>*Id.* at B-179.

<sup>66</sup>*Id.* at 4, citing H.R. Rep. 102-628, 102<sup>nd</sup> Cong., 2<sup>nd</sup> Sess. 97 (1992).

naturally be part of two economic markets.<sup>67</sup> WABG-TV argues that, based on the marketplace reality that WABG-TV and WPTY-TV have engaged in healthy competition for both off-air and cable viewers for decades, it is clear that the subject communities are part of the “economic market” of both stations, which is exactly the type of competition that Congress sought to promote and the Commission should encourage.<sup>68</sup>

16. WABG-TV argues further that there is no merit to the Local Broadcasters’ assertion that it failed to establish the station’s viewership in the subject communities.<sup>69</sup> WABG-TV states that, as demonstrated herein, it has been carried on Cable One’s system for decades, attracts advertisers from the communities, and leaders from the communities have expressed their support for WABG-TV’s local service.<sup>70</sup> While the Local Broadcasters criticize the Nielsen data submitted herein as “stale” and “outdated,” WABG-TV argues that the 2008 Nielsen *County Coverage Study* it submitted was the most recent published data available and conforms to the Commission’s requirement that any data submitted should be “published audience data for the relevant station.”<sup>71</sup> By contrast, WABG-TV notes that the Local Broadcasters rely on an unpublished “special report” that is expressly not contemplated by the Commission’s rules and is, on its face, unreliable.<sup>72</sup> As a result, WABG-TV maintains that the Local Broadcasters’ viewership data submission should be disregarded.

17. WABG-TV also argues that the Local Broadcasters have failed to provide any evidence that contradicts the strong economic and cultural ties between the subject communities and WABG-TV and, indeed, the entire Mississippi Delta region.<sup>73</sup> WABG-TV notes that a commonly relied upon Internet source indicates that the Mississippi Delta region includes all or part of the following counties: Washington, Desoto, Humphries, Carroll, Issaquena, Panola, Quitman, Bolivar, Coahoma, Leflore, Sunflower, Sharkey, Tunica, Tallahatchie, Holmes, Yazoo and Warren.<sup>74</sup> WABG-TV maintains that the

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<sup>67</sup>*Id.* (“The FCC may also determine that certain communities are local to more than one television market, such as a community which is in one [DMA], but is geographically close to television stations in another [DMA] and which also is served by those television stations.”).

<sup>68</sup>*Id.* at 5, citing the *Cable Television Consumer Protection and Competition Act of 1992*, Pub. L. No. 02-385, 106 Stat. 1460, §§ 2(b)(1), (2) (stating that “[i]t is the policy of Congress in the Act to promote the availability to the public of a diversity of views and information through cable television and other video distribution media” and to “rely on the marketplace, to the maximum extent feasible, to achieve that availability.”).

<sup>69</sup>*Id.* at 9.

<sup>70</sup>*Id.*, citing Modification at 11-12 (WABG-TV lists a number of local businesses that purchase advertising on its station – Northwest Regional Medical Center; C. Kent Haney, Attorney at Law; Smith Phillips Law Firm; Clarksdale Coahoma County Chamber of Commerce; Big Delta Honda; and Mid-Delta Health Systems.). We also note a letter from Representative Bennie G. Thompson, expressing support of WABG-TV’s market modification petition on behalf of his constituents in Coahoma and Quitman Counties which was filed as part of the record by WABG-TV’s counsel.

<sup>71</sup>*Id.* at 10, citing 47 C.F.R. § 76.59(b)(6).

<sup>72</sup>*Id.* WABG-TV points out that the Local Broadcasters’ viewership exhibit clearly states that “sample sizes are below minimum reporting standards. . . for internal use only,” indicating that the number of diaries surveyed for the report is too small to be statistically valid. Therefore the report cannot be used as a reliable factual predicate for drawing accurate conclusions about viewing patterns.

<sup>73</sup>*Id.* at 11.

<sup>74</sup>*Id.* at n.35. WABG-TV states that the Mississippi Delta region is an alluvial plain that should not be confused with the actual Mississippi River Delta which lies 300 miles to the south.

Mississippi Delta region as a whole shares a strong economic reliance on agriculture and is infused with a rich cultural heritage as well.<sup>75</sup> WABG-TV states that it is significant that this same internet site only associates two television stations with the Mississippi Delta region – WABG-TV and WXVT.<sup>76</sup> While the Local Broadcasters argue that the subject communities also have economic ties to Memphis, WABG-TV asserts that this fact does not change the analysis because there is nothing mutually exclusive about the communities being economically connected to either Memphis or Greenwood.<sup>77</sup> Indeed, WABG-TV argues that it is entirely plausible, and expressly contemplated by Congress, that the communities should be connected to two different, albeit adjacent, markets.<sup>78</sup> With regard to programming, WABG-TV maintains that the Local Broadcasters’ attempt to show that WPTY-TV also offers certain local programming relevant to the communities misses the point.<sup>79</sup> The crucial fact herein is whether WABG-TV provides substantial amounts of local programming of interest to the communities. WABG-TV states that the fact that WPTY-TV also offers local programming is a byproduct of the healthy competition between these two stations; a competition that would be jeopardized if WABG-TV’s petition is not granted.<sup>80</sup> In any event, WABG-TV maintains that the Commission has repeatedly held that the third criterion – whether other stations entitled to carriage provide programming of local interest – “was intended to enhance a station’s claim where it could be shown that other stations do not serve the communities at issue” and is relevant only in proceedings where the station seeking modification does not provide any local service.<sup>81</sup>

18. WABG-TV argues that the Local Broadcasters’ assertion that WABG-TV has not contended that its continued carriage in the communities would be at risk, absent a grant, is also misplaced.<sup>82</sup> WABG-TV’s continued ability to be carried on Cable One’s system is at risk due to the ABC Network’s requirement that WABG-TV will have to terminate its voluntary retransmission consent agreement to be carried in the subject communities.<sup>83</sup> WABG-TV maintains that a grant of its petition would afford it the same option as WPTY-TV – to elect must carry status or negotiate for retransmission consent in the communities.<sup>84</sup> Moreover, WABG-TV argues that the Local Broadcasters’ claim that a grant of the instant request would threaten WPTY-TV’s carriage, pursuant to Section 76.56(b)(5) of the Commission’s rules, is untenable.<sup>85</sup> Section 76.56(b)(5) states that a cable system is not required to carry

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<sup>75</sup>*Id.* at 11-12, citing [http://en.wikipedia.org/wiki/Mississippi\\_delta](http://en.wikipedia.org/wiki/Mississippi_delta)>. *See id.* at Exhibit 3.

<sup>76</sup>*Id.*

<sup>77</sup>*Id.*

<sup>78</sup>*Id.*, citing H.R. Rep. 102-628, 102<sup>nd</sup> Cong., 2<sup>nd</sup> Sess. 97 (1992).

<sup>79</sup>*Id.* at 13.

<sup>80</sup>*Id.*

<sup>81</sup>*Id.*, citing *Pappas Telecasting, Inc.*, 11 FCC Rcd 6102, 6107 (1996); *Tennessee Broadcasting Partners*, 23 FCC Rcd at 3947; *WTNH Broadcasting, Inc.*, 22 FCC Rcd 19761, 19768 (2007); *Withers Broadcasting Company of West Virginia*, 21 FCC Rcd 5909, 5916 (2006); *Young Broadcasting of Lansing, Inc.*, 18 FCC Rcd 24889, 24894 (2003); *Seal Rock Broadcasters, LLC*, 18 FCC Rcd 16262, 16266 (2003); *Ackerley Media Group, Inc.*, 18 FCC Rcd 16199, 16203 (2003); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526 (1997).

<sup>82</sup>*Id.* at 14, citing Opposition at 8-9.

<sup>83</sup>*Id.* at 15.

<sup>84</sup>*Id.*

<sup>85</sup>*Id.*, citing 47 C.F.R. § 76.56(b)(5).

any local commercial television station that substantially duplicates the signal of another commercial television station that is carried on the system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network.<sup>86</sup> WABG-TV states that Section 76.56(b) also states that “[f]or purposes of this paragraph, substantially duplicates means that a station regularly simultaneously broadcasts the identical programming as another station for more than 50 percent of the broadcast week.”<sup>87</sup> In this instance, however, WABG-TV points out that WABG-TV and WPTY-TV do not meet the substantial duplication test because a review of a typical weekly schedule shows no more than 71 total hours of duplication between the two stations.<sup>88</sup> WABG-TV states that WPTY-TV would need to alter over 12 hours of weekly programming to mirror the programming broadcast by WABG-TV in order to meet the substantial duplication requirement.<sup>89</sup> In addition, WABG-TV points out that Section 76.56(b)(5) of the rules is an exception to the must carry rules and applies only in situations where both stations have elected must carry status.<sup>90</sup> WABG-TV states that while it is true that a grant of its request would allow WABG-TV to elect must carry status in the communities, WPTY-TV has always, to WABG-TV’s knowledge, elected carriage pursuant to a retransmission consent agreement.<sup>91</sup> As a result, WPTY-TV would not be in danger of deletion from Cable One’s system.

19. In comments in support of WABG-TV’s market modification, Cable One states that WABG-TV has been carried in the communities for over 30 years, is geographically and economically connected to the communities, and broadcasts programming of vital interest to the residents in the communities.<sup>92</sup> Cable One points out that the communities at issue lie at the divide between the Memphis and Greenwood-Greenville DMAs and all of the communities are located closer to WABG-TV’s city of license, Greenwood, than to Memphis.<sup>93</sup> Cable One states that, as demonstrated in the petition, the communities economy focuses on Greenwood as its core and because of the strong cultural and historical heritage of the Mississippi Delta region, residents in the subject communities consider themselves to be part of the Greenwood marketplace just as much as they are part of the Memphis market.<sup>94</sup> It is because of this and the fact that WABG-TV provides an abundance of Mississippi-focused local news, sports and general interest programming, states Cable One, that WABG-TV has such a long history of carriage in the communities.<sup>95</sup> As a cable operator facing significant competitive pressure from satellite systems, Cable One maintains that it is highly sensitive to making sure that its subscribers’ viewing preferences are satisfied and WABG-TV’s continued carriage is of great interest to these subscribers.<sup>96</sup> Cable One states

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<sup>86</sup>*Id.*

<sup>87</sup>*Id.*

<sup>88</sup>*Id.* at Exhibit 4.

<sup>89</sup>*Id.* It should be noted that, pursuant to Section 76.56(b)(5), network stations are automatically considered to be duplicating stations, therefore there is no standard to be met, as WABG-TV contends. Such standards apply only to non-network stations.

<sup>90</sup>*Id.* at 16. We note that WABG-TV cites no Commission decisions in support of this contention.

<sup>91</sup>*Id.*

<sup>92</sup>Comments at 1-2.

<sup>93</sup>*Id.* at Exhibits A and B.

<sup>94</sup>*Id.* at 2.

<sup>95</sup>*Id.*

<sup>96</sup>*Id.* at 3.

that it is significant that WABG-TV also delivers a strong off-air signal to the instant communities.<sup>97</sup> Finally, Cable One states that because its intent and desire is to serve its customers' viewing interests, WPTY-TV's continued carriage is not in jeopardy.<sup>98</sup> Indeed, Cable One states that its general policy in situations where two stations affiliated with the same network have been carried historically, is to endeavor to continue carrying both stations under fair and reasonable terms and conditions.<sup>99</sup> Nevertheless, to avoid any doubt, Cable One asserts that it hereby irrevocably waives any right it might have to deny must carry rights under Section 76.56(b)(5) of the rules to WPTY-TV in the communities at issue based on a grant of WABG-TV's market modification petition and would have no objection to the inclusion of such a condition to that effect in the order granting such petition.<sup>100</sup> For these reasons, Cable One urges that the Commission grant WABG-TV's request.

20. We agree with WABG-TV and Cable One and will grant the requested market modification. Section 614(h)(1)(C) of the Communications Act authorizes the Commission to include or exclude particular communities from a television station's market for the purposes of ensuring that a television station is carried in the areas which it serves and which form its economic market.<sup>101</sup> Section 614(h)(1)(C)(i) specifically and unambiguously directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism by taking four statutory factors into account.<sup>102</sup> In this instance, we find that WABG-TV has shown that it meets the market modification criteria. First, WABG-TV has a long history of carriage in the communities at issue. Moreover, carriage by Cable One of the only other station licensed to the Greenwood DMA, WXVT-TV, in the same communities, only reinforces this factor. Second, WABG-TV has demonstrated that its digital signal coverage contour covers all of the communities at issue. Given the strength of WABG-TV's signal and the fact that there are no intervening geographic barriers between WABG-TV's transmitter and the communities, it is likely that the communities also receive a strong over-the-air signal as well. WABG-TV has also demonstrated that it provides locally-focused programming that is of significant interest to the residents in the communities. Indeed, this is supported both by letters from local organizations in the communities, but also by Cable One's unqualified support for the continued availability of WABG-TV's programming to the communities at issue. Third, while there is no disagreement that the Local Broadcasters, and in particular WPTY-TV, provide programming of interest to the communities, we agree with WABG-TV that this criterion is only applicable in situations where it could be shown that other stations did not serve the communities at issue. Fourth, we find that Nielsen's *County/Coverage Survey* data demonstrates that WABG-TV achieves significant viewership shares in Panola, Quitman and Coahoma Counties.<sup>103</sup>

21. Several other factors should also be noted. WABG-TV has stated that, absent must carry status, its carriage would be jeopardized in the subject communities due to the ABC Network's ruling that WABG-TV can no longer seek carriage via a retransmission consent agreement as it has done in the past.

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<sup>97</sup>*Id.* at 4.

<sup>98</sup>*Id.*

<sup>99</sup>*Id.* at n.8.

<sup>100</sup>*Id.* at 4.

<sup>101</sup>47 U.S.C. § 534(h)(1)(C).

<sup>102</sup>47 U.S.C. § 534(h)(1)(C)(i).

<sup>103</sup>Nielsen's 2009 *County/Coverage Study* data indicates that WABG-TV's shares are 0/7, 1/34, and 1/25, respectively.

Cable One has argued that this could potentially be economically harmful if it loses subscribers to other providers and WABG-TV has maintained that it would upset the healthy competition enjoyed between itself and WPTY-TV, as competing ABC stations, both of which have enjoyed long carriage in the communities. WPTY-TV, on the other hand, asserts that grant of WABG-TV's request might jeopardize its carriage, either through the deletion of duplicative programming or Cable One's decision to drop WPTY-TV entirely due to the fact that WABG-TV is geographically closer to the communities at issue.<sup>104</sup> Upon review, we find that the public interest is served by the continued carriage of WABG-TV in the communities. It is evident from the information before us that WABG-TV's programming is of interest and value to the residents therein, as is evidenced by the fact that the station has been carried on the cable system for at least 30 years. Moreover, the communities herein are located on the fringe of the Memphis DMA, not core communities which would be more severely impacted by the must carry status of an out-of-market network affiliate.<sup>105</sup> In view of the foregoing, we find that a grant of WABG-TV's request to include the communities of Batesville, Clarksdale, Courtland, Lambert, Lyon, Marks, Pope, and unincorporated portions of Panola, Quitman and Coahoma Counties, Mississippi in WABG-TV's television market to be in the public interest.

#### IV. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (CSR-8203-A), filed by Commonwealth Broadcasting Group, Inc. **IS GRANTED** for the communities of Batesville, Clarksdale, Courtland, Lambert, Lyon, Marks, Pope, and unincorporated portions of Panola, Quitman and Coahoma Counties, Mississippi.

23. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.

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<sup>104</sup>We note that neither WPTY-TV, nor the Local Broadcasters, have provided any support for the contention that, as a station carried via a retransmission consent agreement, WPTY-TV's carriage would be in jeopardy should WABG-TV's request be granted. The cases cited in support involve situations where both network stations have must carry status are not applicable here. *See* Opposition at 8.

<sup>105</sup>We also note that the population numbers of the instant communities is relatively small. The largest community, Clarksdale, has a population of approximately 21,000, while Batesville, Lambert and Marks have populations of approximately 4600, 1600 and 2200, respectively.



FEDERAL COMMUNICATIONS COMMISSION

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